

APPEAL NO. 021969
FILED SEPTEMBER 19, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 8, 2002. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second or third quarters. The claimant appeals those determinations and the respondent (carrier) files a response urging affirmance.

DECISION

Reversed and rendered.

The hearing officer determined that the claimant was not entitled to SIBs for the second or third quarters because the claimant did not attempt in "good faith" to obtain employment commensurate with the claimant's ability to work. The "good faith effort" requirement, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)) provides that "an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee: . . . (2) has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the [TRC] during the qualifying period" It is undisputed that during the second and third quarters the claimant was enrolled in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC). The hearing officer determined in Finding of Fact No. 8:

During the qualifying periods for the 2nd and 3rd quarter, Claimant did not satisfactorily participate in a full time vocational rehabilitation program sponsored by the [TRC] because Claimant's Individualized Plan for Employment (IPE) with the [TRC] included "responsibilities" of "Obtain and maintain employment" and "Follow-up on job leads" and Claimant did not seek employment.

The hearing officer erred. The IPE provides, "it is expected that [the claimant] will become employed after completing the services on this IPE." We do not agree that the IPE establishes a requirement to simultaneously attend training and search for a job. As we noted in Texas Workers' Compensation Commission Appeal No. 000001, decided February 16, 2000, the preamble to Rule 130.102(d)(2) states that any program provided by the TRC should be considered a full-time program. The preamble stated that "[t]his concept precludes an insurance carrier from requiring an injured employee to participate in a vocational rehabilitation program sponsored by the TRC . . . and then expect the injured employee to continue to seek employment commensurate with the injured employee's ability over and above the rehabilitation plan requirements; seeking employment may be part of the rehabilitation program." 24 Tex. Reg. 10343 (1999); cited by Texas Workers' Compensation Commission Appeal No. 010639, decided April

25, 2001. Thus, when a claimant is enrolled in a full-time vocational rehabilitation program sponsored by the TRC, there is no requirement that the claimant also seek employment.

Accordingly, we reverse the hearing officer's decision and order and render a new decision and order that the claimant is entitled to SIBs for the second and third quarters. The carrier is ordered to pay benefits consistent with this decision, including interest on accrued unpaid benefits.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**WILLIAM PARNELL
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Margaret L. Turner
Appeals Judge